

Division of Developmental Disabilities Services (DDDS) Task Force

Regulations Subcommittee

Meeting Minutes – December 2, 2019

Senator Anthony N. Delcollo, Chair, called the meeting to order at 1:00pm. Subcommittee members present were Thomas Cook (Ability Network of Delaware), David Paige (Community Systems, Inc.), Marissa Band (Disabilities Law Program/CLASI), and Debra Miller (Chimes). Libby Cusack (Advocate) joined via telephone. David Burris, Chief of Staff for the Senate Minority Caucus, was also present.

Chair Anthony Delcollo introduced the committee's purpose and asked those present and those on the phone to introduce themselves and the constituency they represent.

Chair Delcollo explained the purpose of the overall SCR 62 effort and the broader DDDS task force's goals, then focused on the specific purpose of this subcommittee to satisfy a specific goal in analyzing and making recommendations on regulations, specifically, but not limited to, the proposed "2103 Reportable Incident Management and Corrective Measures" document.

Member Thomas Cook offered background from the provider perspective on the regulations and regulatory process, offering recent historical perspective as to what has taken place with regulations in this arena in recent years, along with listing some specific frustrations continually observed by the provider community. Mr. Cook distributed documents relative to this discussion.

Chair Delcollo introduced the concept of due process to the conversation, both in the implementation and in the offering of regulations and cited the significant importance of due process. Sen. Delcollo also indicated his interest in inviting a Deputy Attorney General (DAG) with relevant experience and a representative from DDDS to attend future meetings of this subcommittee. Member Debra Miller noted that the relevant position of Director of Program Integrity in DDDS is currently, or will soon be, vacant. Sen. Delcollo requested recommendations from the committee as to who the proper representative from the Division would be. Further conversation ensued about the specifics of due process.

Member Debra Miller inquired about the impetus for the creation of regulations. Mrs. Miller was uncertain as to why the need arose to create these regulations in the first place, and she cited the PM 46 policy memo as the prior guiding document. Member Cook cited a case where a provider was placed on probation and could not get answers about process, including requests by counsel as to the authority for the action.

Chair Delcollo inquired about the committee's recommendations about how to approach their duties in reviewing the regulations. Sen. Delcollo offered the idea of beginning with

the authorizing statute itself to discover statutory authority. Discussion ensued about the specifics of how to satisfy the requirements of the committee, including the impact on providers, insurance rates, due process details and the protection of vulnerable populations. Mr. Cook cited the federal requirements from Medicaid waivers and Centers for Medicare & Medicaid Services (CMS) regulations as the basis of all of the regulations at the state level and suggested that those requirements be part of the committee's review, perhaps even the first step. Sen. Decollo cited the need to balance the protection for vulnerable populations with predictability and due process for providers.

Member Marissa Band (CLASI) agreed with the need to have someone from DDDS and a DAG at the table for future discussions, specifically those with knowledge of the CMS and Waiver requirements. Mrs. Band suggested that the federal requirements be the first set reviewed by the committee. She suggested that protecting the consumer be the focus of the committee in the end. Sen. Delcollo suggested that the regulations need to be structured properly, or else there will be subsequent legal action that will dismantle what is created. He added that litigation can lead to chaos. Mrs. Band cited the confusion in the current system and in the proposed regulations.

Sen. Delcollo reviewed the plan for analysis. First, to review the federal requirements. Second, to review line by line the proposed regulations. Examining for protection of consumers, balanced by predictability for providers. Mr. Cook referenced providers desire to ensure that family & guardians of people with disabilities get proper and timely information. Sen. Decollo mentioned overlapping authorities as a potential issue due to lack of clarity. Mr. Cook referenced turnover in the division as a prior roadblock to progress and referred to Tennessee as the state whose regulations became the basis for this proposal. Sen. Delcollo mentioned a desire to review the impact of the regulations in Tennessee as a possible portion of this committee's work.

Member Libby Cusack referred to frustrations on the part of parents and advocates concerning communication and information distribution. She questioned whether the committee would focus solely on the proposed 2103 regulation or examine more broadly the DDDS regulations as a whole. Sen. Delcollo agreed that a broader view is appropriate, given the broader concern with the existing scheme. Mr. Paige asked for clarity on this regulation vs. the PM 46 policy memo. Mr. Cook reviewed the shortcomings with the existing regulatory structure, which create the need for the regulation. Mrs. Cusack asked for a copy of the PM 46 document. The committee agreed that the document should be made available as part of the review. Mr. Cook added that the federal regulations and requirements should also be part of the review, since PM 46 emerged from those. Mrs. Miller cited additional regulations that govern other parts of this industry.

Sen. Decollo offered this discussion as a completion of the initial review, and cited the following takeaways. Mr. Cook cited a few specific concerns by providers about the proposed regulation that merit specific review. Discussion ensued about the process of creating the regulation draft. Sen. Delcollo asked about the existence of a licensing board for the workers in the industry. Mr. Cook answered that no licensure was required prior to

working, but that people could be removed by an authority. A wide-ranging discussion ensued about the specifics of investigations and the concerns with those.

The committee listed a few additional documents that will be needed, including from CMS and DDDS. Members cited a lack of information about ongoing investigations, including the withholding of information from parents and guardians. Sen. Delcollo took great exception with that practice and its questionable legality and constitutionality. Mr. Cook elaborated on the benefits of the improved process, and how the legal system, if used, will lead to positive change for the industry.

Mrs. Band asked what the members should do between meetings to prepare for the next one. Sen. Delcollo asked for feedback and thoughts via email as well as any requests for documents the committee desired. He suggested a second meeting in December for the purposed of considering the material, now that the committee has reviewed the lay of the land.

Sen. Delcollo cited the following as the planned goals for the next meeting: Reviewing CMS requirements; reviewing Delaware statutory requirements and other frameworks in place; examining general requirements of due process, how things are reported and the status quo; hearing from a representative from DDDS and a DAG. A third meeting would then examine line-by-line the proposed regulation.

The next meeting was tentatively planned for the morning of December 20th, pending confirmation and the identification of the location.

No public comment was offered.

The meeting concluded at 2:32pm.

Minutes prepared by:

David Burris, Chief of Staff, Delaware Senate Minority Caucus

Access to the audio recording of this proceeding is available upon request.